

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RICHARD GONZALES,

Plaintiff,

vs.

Civ. No. 97-984 HB/LCS

CITY OF LAS CRUCES,

Defendant.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

Proposed Findings

This matter comes before the Court upon Plaintiff's Motion to Strike and Objections to Summary Judgment Evidence Presented by Defendant, filed April 15, 1998. The Plaintiff asks the Court to strike various portions of the affidavit by Lt. Conrad Perea and attachments thereto. However, the Plaintiff neglected to observe that the Defendant's motion for summary judgment is based solely on the testimony of the Plaintiff and his expert, Joe Provencio. In fact, it would appear that the Defendant has carried its initial burden of demonstrating the absence of a genuine issue of material fact and the burden would now shift to the Plaintiff to produce evidence that the Defendant's reasons for terminating the Plaintiff are pretextual. See **McDonnell Douglas Corp. v. Green**, 411 U.S. 792, 804 (1973); **Celotex Corp. v. Catrett**, 477 U.S. 317, 322-23 (1986). Moreover, Lt. Perea's affidavit does not contain inadmissible hearsay but rather contains background information regarding what the Defendant claims to be legitimate reasons for terminating the Plaintiff. For these reasons, I find that the Plaintiff's Motion to Strike and

Objections to Summary Judgment Evidence Presented by Defendant is not well taken and should be denied.

Recommended Disposition

I recommend denying the Plaintiff's Motion to Strike and Objections to Summary Judgment Evidence Presented by Defendant. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.



Leslie C. Smith
UNITED STATES MAGISTRATE JUDGE